

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

_____)	
DAVID PINGATORE, et al.,)	
Plaintiffs,)	
)	
v.)	C.A. No. 11-068-S
)	
TOWN OF JOHNSTON, et al.,)	
Defendants.)	
_____)	

ORDER

William E. Smith, United States District Judge.

The matter is before the Court on Defendants' objection to Magistrate Judge Lincoln D. Almond's Report and Recommendation, dated October 31, 2011. (ECF No. 21.) Magistrate Judge Almond recommended that Plaintiffs' motion for partial summary judgment as to Fair Labor Standards Act (FLSA) liability be granted and that Defendants' cross-motion be denied. This Court's review of such objections is de novo. See Fed. R. Civ. P. 72(b)(3).

Upon careful review of the Report and Recommendation, it is clear that Defendants' objection is without merit. Defendants press the same arguments and case law as they did before Magistrate Judge Almond -- namely, that the regular rate can be stipulated by the parties. These arguments remain unavailing. See O'Brien v. Town of Agawam, 350 F.3d 279, 294 (1st Cir. 2003) ("[T]he regular rate cannot be stipulated by the parties;

instead, the rate must be discerned from what actually happens under the governing employment contract.").

The Report and Recommendation of Magistrate Judge Lincoln D. Almond, filed on October 31, 2011, is accepted pursuant to 28 U.S.C. § 636(b)(1). Accordingly, Plaintiffs' motion for partial summary judgment is GRANTED; Defendants' cross-motion is DENIED.

IT IS SO ORDERED.

/s/ William E. Smith

William E. Smith
United States District Judge
Date: December 6, 2011